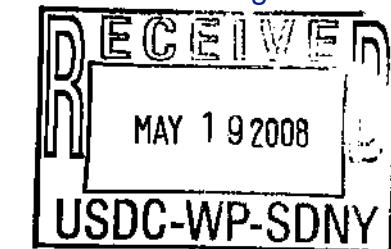


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

ROBERT L. PAVONE and VALERIE V.  
PAVONE,

Plaintiffs,



08 Civ.2389 (CLB/LMS)

-against-

LINDA PUGLISI, individually, ANN  
LINDAU, individually, FRANCIS X.  
FARRELL, individually, JOHN SLOAN,  
individually, THOMAS WOOD,  
individually and the TOWN OF  
CORTLANDT, New York,

**FIRST AMENDED  
COMPLAINT**

**Jury Trial Demanded**

Defendants.

-----x

Plaintiffs ROBERT L. PAVONE and VALERIE V. PAVONE, by  
their attorneys Lovett & Gould, LLP, for their first amended  
complaint respectfully allege:

**NATURE OF THE ACTION**

1. This is an action for compensatory and punitive  
damages, proximately resulting from Defendants' on-going  
conduct as engaged in under color of New York State law, for  
violations of Plaintiffs' rights as guaranteed them by  
reason of the First and Fourteenth Amendments to the United  
States Constitution, 42 U.S.C. §§1983.

**JURISDICTION**

2. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331, 1343. Plaintiff Robert L. Pavone's state law claim is interposed in accordance with the Court's supplemental jurisdiction, 28 U.S.C. §1337.

**THE PARTIES**

3. Plaintiffs ROBERT L. PAVONE (hereinafter "R. Pavone" and/or "Chief") and VALERIE V. PAVONE (hereinafter "V. Pavone") are husband and wife, citizens of the United States, domiciliaries of the State of New York and residents of the Northern Counties. At all times relevant to this complaint prior to March 7, 2008, R. Pavone was the duly appointed Chief of Police of the Defendant Town. V. Pavone at all times relevant to this complaint was employed by the Defendant Town and since May of 2007 until March of 2008 served as the "White Collar Representative" of AFSCME Local 2343 (hereinafter "union") which represents certain employees of the Defendant Town.

4. Defendant LINDA PUGLISI (hereinafter "Puglisi"), who is sued in her individual and personal capacities only, at all times relevant to this complaint was the duly elected Supervisor of the Defendant Town. As such she is a voting member of the Town Board of the Defendant Town (hereinafter "Board").

5. Defendant ANN LINDAU (hereinafter "Lindau"), who is sued in her individual and personal capacities only, at all times relevant to this complaint was a duly elected member of the Board.

6. Defendant FRANCIS X. FARRELL (hereinafter "Farrell"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was a duly elected member of the Board.

7. Defendant JOHN SLOAN (hereinafter "Sloan"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was a duly elected member of the Board.

8. Defendant THOMAS WOOD (hereinafter "Wood"), who is sued in his individual and personal capacities only, at all times relevant to this complaint was the duly appointed Town Attorney for the Defendant Town.

9. Defendant TOWN OF CORTLANDT, New York is a municipal corporate subdivision of the State of New York duly existing by reason of and pursuant to the laws of said State.

#### THE FACTS

10. In 1999 the Chief commenced a civil rights action in this Court against amongst others Defendant Thomas Wood [Pavone v. Wood, 99 Civ. 4991 (CLB) (hereinafter "Pavone I")] alleging *inter alia* violations of his rights as guaranteed

by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

11. On March 20, 2000, Pavone I was settled before the Hon. Charles L. Brieant on terms set forth in the transcript of that proceeding a copy of which is annexed and incorporated in this complaint.

12. In connection with that settlement, provisions of an earlier agreement pertaining to the Chief's entitlement to salary benefits pursuant to Section 207-c of the New York State General Municipal Law as executed by the Town and the Chief, were incorporated. Annexed is a copy of that stipulation, dated November 8, 1999, which is incorporated in this complaint.

13. By reason of the latter settlement agreement:

a. The Town obligated itself to prospectively pay the cost of health care coverage for the Chief and his family, and *inter alia*,

b. The Town agreed to pay the Chief his "207-c salary benefits" until the Chief either received disability retirement from the State of New York or he "exhausted any and all administrative remedies" by reason of which he sought disability retirement status from the State.

14. Commencing in mid 2007, V. Pavone assumed duties as the White Collar Representative for her union and in that connection vigorously and zealously advocated on behalf of

the union and its constituent members against the Town on a variety of contentious issues including ones pertaining to health, safety, and the illegal appointment of the Town's Engineer.

15. As a proximate result of V. Pavone's activities as a union representative, Defendants in February 2008 entered into an agreement, expressly opposed as illegal by Defendants' outside labor counsel (who disclosed his opposition to a representative of the Chief), to retaliate against Plaintiffs with the objective of crippling them financially and *inter alia* silencing V. Pavone's exercise of associational rights on behalf of the union.

16. In furtherance of that agreement, by resolution #68-08 adopted by the individually named Defendants (other than Wood, who upon information and belief drafted that resolution and urged its passage) on February 25, 2008, the Chief's Section 207-c benefits were summarily terminated effective March 7, 2008, despite the facts that:

a. He had not, and to date still has not exhausted any and all administrative remedies in connection with his application for disability retirement -- a circumstance known to the Defendants, and

b. Having not exhausted those remedies Defendants could not lawfully terminate the Chief's Section 207-c

benefits without first according him a pre-deprivation Due Process hearing -- which he was neither offered nor given.

17. By reason of the economic retaliation visited on the Plaintiffs because of V. Pavone's union activities, effective March 8, 2008, she resigned as the union's White Collar Representative and will not prospectively engage in any associational activities protected by the First Amendment with respect to the Town and/or the union.

18. On March , 2008, Plaintiffs filed this action and on March , 2008, Defendants were duly served with the summons and complaint.

19. Shortly after that filing and at the direction of Wood, Defendants agreed to take causally related retaliatory action against the Chief with the objective of inflicting additional financial injury upon both Plaintiffs. In that connection:

a. Knowing that the Chief is currently seeking non-disability retirement status (while concurrently pursuing disability retirement status administratively) in order to receive pension benefits/payments, Defendants have repeatedly refused to provide to the State of New York required documentation without which the non-disability retirement benefits cannot be processed and/or paid, and,

b. Knowing that the Chief is entitled as a matter of law to Workers Compensation payments in the absence of

207-c benefits, Defendant Wood (acting with the concurrence of his co-defendants) has prohibited those payments from being made to the Chief.

20. By reason of Defendants' conduct Plaintiffs have been caused to suffer: pecuniary damages; anxiety; emotional upset; public humiliation; public embarrassment; impairment of their constitutionally protected rights, and they have otherwise been rendered sick and sore.

**AS AND FOR A FIRST CLAIM**

21. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

22. Under the premises Defendants' termination of the Chief's 207-c benefits in retaliation for V. Pavone's exercise of her right of association violated the Chief's rights as guaranteed on a third party standing basis by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A SECOND CLAIM**

23. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

24. Under the premises Defendants' have intentionally chilled V. Pavone in the exercise of her associational rights in violation of the First Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A THIRD CLAIM**

25. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

26. Defendants' termination of the Chief's 207-c benefits in retaliation for V. Pavone's exercise of associational rights violated the Chief's right of intimate association as protected by the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A FOURTH CLAIM**

27. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

28. In connection with the settlement referenced *supra* a co-plaintiff (Vincent Pagliaroli) of the Chief in Pavone I was identically situated to the Chief with respect to: i) prospective entitlement to Section 207-c benefits until he either was granted disability retirement status or

finally exhausted all administrative remedies with respect to his application for disability retirement; and ii) upon exhaustion of all such remedies and termination of Section 207-c benefits to the payment of Workers Compensation benefits. With respect to the entitlement referenced *supra* in paragraph "28(i)", another co-plaintiff (Susan Whitmore) in Pavone I was identically situated to Pagliaroli and the Chief.

29. Pagliaroli's entitlement to the benefits of Section 207-c was in fact provided until he received disability retirement and/or exhausted all of his administrative remedies with respect to same. Upon the termination of his 207-c benefits Pagliaroli in fact received Workers Compensation benefits -- as did Whitmore.

30. Under the premises Defendants' termination of the Chief's benefits pursuant to Section 207-c and the prohibition against payment of Workers Compensation benefits to him violated his rights as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A FIFTH CLAIM**

31. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

32. Defendants' termination of the Chief's right to Section 207-c benefits, without benefit of a pre-deprivation hearing, violated his right to Due Process as guaranteed by the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A SIXTH CLAIM**

33. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

34. Defendants' retaliatory refusal to provide factual data to the State required in order to process the Chief's application for non-disability retirement status violated his rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR A SEVENTH CLAIM**

35. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

36. Defendants' retaliatory denial of Workers Compensation benefits to the Chief violated his rights as guaranteed by the First Amendment to the United States Constitution, 42 U.S.C. §1983.

**AS AND FOR AN EIGHTH CLAIM**

37. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

38. Defendants' termination of the Chief's benefits as provided for in the stipulation of settlement in Pavone I constitutes a breach of contract actionable for damages under the common law of the State of New York.

**AS AND FOR A NINTH CLAIM**

39. Repeat and reallege as if fully set forth the allegations of fact contained in paragraphs "1" to "20", inclusive.

40. Pursuant to the terms of the stipulation in Pavone I, so long as the Chief was entitled to Section 207-c benefits the terms of *inter alia* his health insurance benefits as provided by the Town were to remain as they were on the date of that settlement -- or in the event of an increase in such benefits during that period of time, the Chief was to receive any such increase.

41. Since in or about 2002 Defendants have unilaterally reduced the Chief's health insurance benefits in material respects.

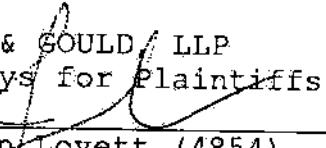
42. Under the premises Defendants violated Plaintiff's contractual rights, a circumstance actionable for damages under the common law of the State of New York.

WHEREFORE a judgment is respectfully demanded:

- a. Awarding against the individually named Defendants such punitive damages as the jury may impose,
- b. Awarding against all Defendants such compensatory damages as the jury may determine,
- c. Enjoining on a mandatory basis Defendants to forthwith provide to the State the requested data required for processing the Chief's non-disability retirement application,
- d. Enjoining on a mandatory basis Defendants to provide and/or cause to be provided to the Chief forthwith the Workers Compensation benefits to which he is entitled,
- e. Awarding reasonable attorney's fees, costs, and,

f. Granting such other and further relief as to  
the Court seems just and proper.

Dated: White Plains, N.Y.  
May 17, 2008

LOVETT & GOULD / LLP  
Attorneys for Plaintiffs  
By:   
Jonathan Lovett (4854)  
222 Bloomingdale Road  
White Plains, N.Y. 10605  
914-428-8401

**COPY**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
ROBERT L. PAVONE, et. al.

Plaintiffs,

-against-

96 Civ. 4991

THOMAS WOOD, et. al.,

Defendants.

-----x  
United States Courthouse  
White Plains, New York

MARCH 20, 2000  
12:13 o'clock p.m.

Before:

HON. CHARLES L. BRIEANT,

District Court Judge

APPEARANCES:

JONATHAN LOVETT, Esq.

KIM BERG, Esq.,

Attorneys for Plaintiffs

DANIEL RIESEL, Esq.

MICHAEL BOGIN, Esq.

-and-

S. PITKIN MARSHALL, Esq.

Attorneys for Town of Cortlandt

PAUL F. DOYLE, Esq.

Attorney for Linda Puglisi

BRIAN CLARK, Esq.

EDWARD CAPLICKI, Esq.

Attorneys for Thomas Wood

Court Reporter: ANGELA A. O'DONNELL, RPR

Proceedings recorded by mechanical stenography, transcript produced by C.A.T.

1 PROCEEDINGS

2 THE COURT: Are you ready to proceed?

3 MR. LOVETT: Yes, we are.

4 MR. RIESEL: We are, your Honor.

5 THE COURT: Please proceed.

6 MR. RIESEL: Daniel Riesel from Sive, Paget &

7 Riesel for the Town of Cortlandt. Your Honor, the parties  
8 have reached a settlement, and I'm prepared to put that  
9 settlement on the record at this time.

12:13P 10 THE COURT: Please do so.

11 MR. RIESEL: With respect to the remaining 13  
12 plaintiffs in this case, upon the receipt of a general  
13 release from the plaintiffs, we will pay \$300,000 to the  
14 firm of Lovett & Gould, as attorney fees, and the sum of  
15 \$1,470,000 by check made jointly payable to Lovett & Gould  
16 and the plaintiffs in full settlement. We will do this in  
17 30 days from today's date.

18 And, your Honor, we will need an order from this  
19 Court to comply with the local rule, both I think from -- I  
20 think from the prior matter and this matter, we will supply  
21 that to you, if you're willing to sign it.

12:15P 22 THE COURT: All right. Now as far as the division  
23 of it, I assume I am not concerned with that if everybody  
24 assents to it, is that right?

25 MR. LOVETT: That's right.

1 MR. RIESEL: We have some other matters to put on  
2 the record.

3 THE COURT: Don't you think we should first get  
4 assent to what you have done so far?

5 MR. RIESEL: Yes, your Honor, I do. Thank you.

6 MR. LOVETT: That's acceptable.

7 THE COURT: All right. It's so stipulated on  
8 behalf of all the remaining 13 plaintiffs?

9 MR. LOVETT: Subject to the additional components  
10 Mr. Riesel is going to put on the record.

11 THE COURT: May the record show, as I understand  
12 it, 12 of them are in the courtroom.

13 MR. LOVETT: All but William Wilson, who is on his  
14 way over from Rockland County.

15 THE COURT: You have spoken with Mr. Wilson?

16 MR. LOVETT: I did, 15 minutes ago. He was under  
17 subpoena in a criminal matter --

18 THE COURT: He indicated to you you could go ahead  
19 and settle the case?

20 MR. LOVETT: Yes.

21 MR. RIESEL: With respect to plaintiffs Wilson,  
22 Diana and Underwood, in addition to the foregoing, the Town  
23 agrees that, should these plaintiffs lose their medical and  
24 dental, including their family medical and dental provisions  
25 that they have under their current employment, the Town of

1 Cortlandt will extend to them medical and dental under the  
 2 prevailing Collective Bargaining Agreement.

3 With respect to the plaintiff Macaluso, he will  
 4 receive assurances that he is covered under the Collective  
 5 Bargaining Agreement which expired on December 31, 1998, for  
 6 medical and dental. He will also receive a general  
 7 reference letter indicating his proper and good service to  
 8 the Town.

12:16P 9 With respect to those two plaintiffs that are  
 10 receiving benefits under section 207(c) of the General  
 11 Municipal Law, so long as they remain on section 207(c) they  
 12 will receive a prospective longevity payment as if they  
 13 would be receiving it under the Collective Bargaining  
 14 Agreement expired on December 31, 1998, between the Town and  
 15 Policeman's Benevolent Association.

16 I think that's it.

12:17P 17 (Counsel confer.)

18 MR. LOVETT: May we have a minute, your Honor?

19 THE COURT: Certainly.

20 (Pause.)

21 12:21P MR. RIESEL: Judge, I apologize, can you indulge us  
 22 for another five minutes?

23 THE COURT: I have not been interrupting you. You  
 24 have a right to speak with each other and your clients.

25 MR. RIESEL: Thank you, your Honor.

1 THE COURT: Please don't make the record appear as  
2 if I was impatient.

12:22P 3 MR. RIESEL: Judge.

4 THE COURT: Those of you who really know me  
5 understand that I am never impatient.

6 MR. RIESEL: That's correct, your Honor, and if I  
7 have done that, I'm sure it would be borne out by the  
8 record.

12:23P 9 (Pause.)

10 MR. RIESEL: Your Honor, your indulgence, as  
11 anticipated, is appreciated.

12 With respect to Mr. Rao, we will extend that same  
13 benefit package to Mr. Rao.

14 With respect to the two officers on 207(c) which I  
15 mentioned, those are Officers Pagliaroli and Pavone, I have  
16 been asked by counsel to agree to a proposition that any  
17 application by Mr. Pagliaroli for a permanent disability  
18 will be handled in the same way that we are handling  
19 Mr. Pavone's application at this time, which is embodied in  
20 the stipulation signed by the Town and Mr. Pavone or his  
21 counsel.

12:27P 22 THE COURT: So agreed to, is it?

23 MR. LOVETT: Just one clarification. The benefits  
24 that were extended to Rao, the medical/dental --

25 MR. RIESEL: That's it.

1 MR. LOVETT: And with respect to the  
2 medical/dental, to the extent extended to any of these  
3 plaintiffs, my understanding is that the benefits they get  
4 will be no less than is presently provided to employees and  
5 officials of the Town.

12:28P

6 MR. RIESEL: Yes.

7 MR. LOVETT: In the event there's an increase in  
8 the future, my clients will get the benefit of the increase.

9 THE COURT: They'll get the deal at the time they  
10 come within these provisions, yes.

11 MR. LOVETT: That's acceptable.

12 THE COURT: All right. Are you finished?

13 MR. RIESEL: Yes, I am.

14 THE COURT: Is there anything else that has to be  
15 added before counsel stipulate on the record?

16 MR. LOVETT: No, your Honor.

17 THE COURT: What procedure would you like to follow  
18 to ascertain the full understanding and assent to settlement  
19 by the individual plaintiffs who are here?

20 MR. CLARK: One thing, just so everything is clear,  
21 so all loose ends are tied up. The release entered into by  
22 the plaintiffs will also release specific individual  
23 defendants.

24 THE COURT: All defendants are being released by  
25 the settlement, as the Court understands it, but the payment

1 is being made by the Town.

2 12:29P MR. LOVETT: It's my understanding the releases are  
3 reciprocal. We're certainly going to release all the  
4 defendants. I assume the defendants are going to release  
5 all the plaintiffs.

6 THE COURT: I suppose so. This case closes out  
7 every claim that could have been brought.

8 MR. RIESEL: Your Honor, we anticipate receiving a  
9 general release for our payment. We have no claims at this  
10 time in these litigations against the defendants.

11 THE COURT: Against the plaintiffs you mean?

12 MR. RIESEL: Plaintiffs.

13 THE COURT: You know, it's a Blumberg form, it  
14 doesn't cost anybody anything.

15 MR. RIESEL: Your Honor, I don't believe that a  
16 general -- these individuals are -- we have only one claim  
17 in this litigation, as far as I know, and that is an old  
18 claim under Rule 11 that we're prepared to release. I don't  
19 believe the Town -- the Town is giving a lot of money here  
20 and doesn't have any other claims in this litigation.

12:31P 21 MR. RIESEL: There is an outstanding judgment  
22 against Mr. Pavone for \$10,000, and we will waive that.

23 THE COURT: All right. The record will so  
24 indicate.

25 Now, do we have the entire understanding of the

1<sup>o</sup> parties on the record?

2 MR. LOVETT: Yes, we do.

3 THE COURT: Would you then ascertain each plaintiff  
4 who is present understands it and assents to it and  
5 understands that they cannot come back?

6 MR. LOVETT: Do you want me to do that?

7 THE COURT: If you want to ascertain one by one of  
8 the plaintiffs who are here by letting them respond to your  
9 inquiry.

10 MR. LOVETT: May I do it globally?

THE COURT: Yes.

12 MR. LOVETT: Fine.

13 THE COURT: I think you have to ask each individual  
14 who's here one by one.

12:34P 15

15 MR. LOVETT: Robert Pavone, do you understand the  
16 terms of the settlement that have been explained to you both  
17 now on the record and as by me individually?

18 ROBERT PAVONE: Yes, I do.

19 MR. LOVETT: Are those terms acceptable to you?

20 ROBERT PAVONE: Yes, they are.

21 MRL LOVETT: Are you agreeing to those terms freely  
22 and voluntarily?

23 ROBERT PAVONE: Yes, I am.

24 MR. LOVETTE: Thank you.

25 Thomas Diana. Do you understand the terms of the

ANGELA A. O'DONNELL, RPR - US District Court, SDNY

1 settlement as explained to you both by me on a one-on-one  
2 basis and as presented by Mr. Riesel on the record?

3 THOMAS DIANA: Yes, I do.

4 MR. LOVETT: Are those terms acceptable to you?

5 THOMAS DIANA: Yes, they are.

6 MR. LOVETT: Do you understand -- withdrawn. Do  
7 you voluntarily and willfully enter into the settlement  
8 agreement?

9 THOMAS DIANA: Yes, I do.

10 MR. LOVETT: Thank you.

11 Peter Macaluso, do you understand the terms of the  
12 settlement as have been explained to you by me and as put on  
13 the record by Mr. Riesel?

14 PETER MACALUSO: Yes, sir.

12:35P 15 MR. LOVETT: Are you voluntarily entering into that  
16 stipulation of settlement?

17 PETER MACALUSO: Yes, sir.

18 MR. LOVETT: Thank you.

19 Susan Whitmore, do you understand the terms of the  
20 settlement as presented to you by me and as explained on the  
21 record in substantial respect by Mr. Riesel?

22 SUSAN WHITEMORE: Yes, I do.

23 MR. LOVETT: Are those terms acceptable to you?

24 SUSAN WHITEMORE: Yes, they are.

25 MR. LOVETT: Are you entering into the stipulation

1 of settlement voluntarily?

2 SUSAN WHITEMORE: Yes.

3 MR. LOVETT: Thank you.

4 Jerry Underwood, do you understand the terms of the  
5 settlement explained to you by me and separately put on the  
6 record by Mr. Riesel?

7 JERRY UNDERWOOD: Yes, I do.

8 MR. LOVETT: Are those terms acceptable to you?

9 JERRY UNDERWOOD: Yes.

10 MR. LOVETT: You're entering into the stipulation  
11 voluntarily?

12 JERRY UNDERWOOD: Yes.

13 MR. LOVETT: Your Honor, William Wilson is the  
14 next-named plaintiff. He's not here. He was subpoenaed in  
15 criminal matter in Rockland County. As I indicated to the  
16 Court, I spoke with him by phone approximately 35, 40  
17 minutes ago and he agreed to the terms.

12:36P 18 THE COURT: The record will so indicate as to  
19 Mr. Wilson.

20 MR. LOVETT: Thank you, your Honor.

21 Vincent Pagliaroli. Mr. Pagliaroli, do you  
22 understand the terms of the settlement as explained by me to  
23 you and as set forth on the record by Mr. Riesel?

24 VINCENT PAGLIAROLI: Yes, I do.

25 MR. LOVETT: Are those terms satisfactory to you?

1 VINCENT PAGLIAROLI: Yes, they are.

2 MR. LOVETT: Are you entering into the settlement  
3 agreement voluntarily?

4 VINCENT PAGLIAROLI: Yes.

5 MR. LOVETT: Thank you.

6 Anthony Rao, do you understand the terms of the  
7 settlement as have been explained to you by me and as have  
8 been put on the record by Mr. Riesel?

9 ANTHONY RAO: Yes.

10 MR. LOVETT: Do you understand them?

11 ANTHONY RAO: Yes.

12 MR. LOVETT: Are you assenting to them?

13 ANTHONY RAO: Yes.

14 MR. LOVETT: Are you doing that voluntarily?

15 ANTHONY RAO: Yes, sir.

16 MR. LOVETT: Thank you.

17 Warren Bonds, do you understand the terms of the  
18 settlement as put to you by me and as explained on the  
19 record by Mr. Riesel?

20 WARREN BONDS: Yes, I do.

21 MR. LOVETT: Are those terms acceptable to you?

22 WARREN BONDS: Yes.

23 MR. LOVETT: Do you voluntarily agree to settle the  
24 case on those terms as apply to you?

25 WARREN BONDS: Yes.

1 MR. LOVETT: Thank you.

2 Rose Orlando, do you understand the terms of the  
3 settlement as explained to you by me and as put on the  
4 record by Mr. Riesel?

5 ROSE ORLANDO: Yes.

12:37P 6 MR. LOVETT: Are those terms acceptable to you?

7 ROSE ORLANDO: Yes.

8 MR. LOVETT: Are you voluntarily entering into the  
9 settlement to terminate your litigation?

10 ROSE ORLANDO: Yes.

11 MR. LOVETT: Theresa Lowery, do you understand the  
12 terms of the settlement that have been explained to you by  
13 me and as have been expressed on the record by Mr. Riesel?

14 THERESA LOWERY: Yes.

15 MR. LOVETT: Are those acceptable to you?

16 THERESA LOWERY: Yes.

17 MR. LOVETT: Are you voluntarily entering into this  
18 stipulation to settle the litigation?

19 THERESA LOWERY: Yes.

20 MR. LOVETT: Thank you.

21 Mary Schnittert, do you understand the terms of the  
22 settlement as have been explained to you by me and  
23 Mr. Riesel on the record?

24 MARY SCHNITTERT: Yes.

25 MR. LOVETT: Are those terms acceptable to you?

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1 MARY SCHNITTERT: Yes.

2 MR. LOVETT: Are you voluntarily agreeing to settle  
3 your claims according to those terms?

4 MARY SCHNITTERT: Yes.

5 MR. LOVETT: Any one of the plaintiffs who I just  
6 questioned who does not understand that the settlement of  
7 this case terminates your claims against the Town and Thomas  
8 Wood and Linda Puglisi and that -- did I forget somebody?

12:38P 9 MR. LOVETT: Warren Bonds? Crescenzo. How did

10 I --

11 Christopher Crescenzo, do you understand the terms  
12 of the settlement as have been explained to you by me and  
13 explained by Mr. Riesel on the record?

14 CHRISTOPHER CRESCENZO: Yes.

15 MR. LOVETT: Are they acceptable to you?

16 CHRISTOPHER CRESCENZO: Yes.

17 MR. LOVETT: Do you voluntarily enter into the  
18 settlement with a view towards resolving this litigation?

19 CHRISTOPHER CRESCENZO: Yes.

20 MR. LOVETT: Is there any one of the plaintiffs who  
21 does not understand that these settlement terms will end the  
22 litigation and you cannot come back to court on any of these  
23 claims as against the Town or Wood, Linda Puglisi or any of  
24 the towns officials, agents or employees?

25 (No response.)

1 MR. LOVETT: I see no responses. Thank you.

2 THE COURT: All right, thank you.

3 MR. RIESEL: Judge, I want to thank you and put on  
 4 the record, of course, that the Town has entered into this  
 5 stipulation agreement to avoid a long, costly trial, and  
 6 there's no indication -- I understand there's no indication  
 7 and we don't intend any indication of any wrongdoing by the  
 8 Town or any of its officials or individuals.

12:39P 9 THE COURT: All right, the record will so indicate.

10 The Court marks this case settled, trial discontinued.

11 The plaintiff has to mark an exhibit. You want to  
 12 offer the Collective Bargaining Agreement or something?

13 MR. LOVETT: I'm sorry?

14 THE COURT: Offer an exhibit.

15 MR. LOVETT: An exhibit? At this time I'd like to  
 16 offer Plaintiff's 1.

17 THE COURT: Received in evidence.

18 (So marked.)

19 MR. LOVETT: Thank you.

20 THE COURT: All right. The Court does appreciate  
 21 the efforts of the attorneys, and unless you have practiced  
 22 law, you don't understand how difficult and lengthy these  
 23 matters can become. And you ought to know that a jury panel  
 24 has been waiting downstairs, and they should have been let  
 25 go on their lunch break, but I didn't regard the case as

1 concluded until it was actually done on the record, which  
2 now it is. So we're going to dismiss the panel with thanks.

3 You did say, Mr. Riesel, that the Court had a  
4 formal order to sign?

12:40P 5 MR. RIESEL: Yes, ordering the Town to pay the  
6 amount of monies.

7 THE COURT: What is -- based on what?

8 MR. RIESEL: My understanding is that it's under  
9 the General Municipal Law, Town law 65. I will submit the  
10 order to you this afternoon, probably tomorrow morning.

11 THE COURT: What did you give as the authority?

12 MR. RIESEL: Town law section 65.

13 THE COURT: All right. Again, I want to say thank  
14 you all, and good luck to all of you. We are all going to  
15 go put this litigation behind us, including the Court, and  
16 go on and proceed to enjoy the rest of our lives.

17 Court will be in recess.

18 (At 12:41 p.m., proceedings concluded.)

12:41P 19

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ANGELA A. O'DONNELL, RPR - US District Court, SDNY

C E R T I F I C A T E

I, ANGELA A. O'DONNELL, a Registered Professional Reporter and Notary Public of the State of New York, do hereby certify that the transcript of the foregoing proceedings, taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.

Angela A. O'Donnell  
Angela A. O'Donnell, RPR

ANGELA A. O'DONNELL, RPR - US District Court, SDNY

**207-C STIPULATION BETWEEN Chief Robert L Pavone and the Town of Cortlandt**

WHEREAS, The Town of Cortlandt and Robert L Pavone ("Mr. Pavone") (collectively "the parties"), desire to resolve this pending 207-C matter without further hearings or adjudication, and mutually desire to enter into this negotiated settlement agreement; and

NOW, therefore it is Stipulated and Agreed by the parties for the good and sufficient consideration set forth below that:

1. The Town of Cortlandt shall continue to pay the cost of health care coverage (including medical and dental) for Mr. Pavone and his family until Mr. Pavone's death and thereafter for his survivor pursuant to the attached Town of Cortlandt Resolution No. 156-92 and attached AFSCME Bargaining Agreement.
2. The Town of Cortlandt shall pay to Mr. Pavone the amount of salary Mr. Pavone is currently receiving until Mr. Pavone's application for Police & Fire Retirement for disability, incurred in the performance of duty or accidental disability under §363-X of the Retirement and Social Security Law is granted by New York State. This is governed by the terms of paragraph 7.
3. Mr. Pavone agrees to be responsible for all costs, attorney's fees, and other expenses associated with any administrative appeal of any denial of his applications for accidental or performance of duty disability retirements under §363 of the Retirement and Social Security Law.
4. The Town of Cortlandt agrees within 30 days after the time that Mr. Pavone stops receiving his full salary pursuant to Section 207-C, to pay Mr. Pavone for any unused time including but not limited to vacation, sick and personal time. The calculation used will be 100% of the value of the accrued time.
5. This agreement between the parties shall not be construed for any purpose as an admission by the Town of Cortlandt, Mr. Thomas F. Wood or any of the parties of any liability or unlawful conduct. The parties acknowledge that this

agreement is being entered into for solely the purpose of avoiding the cost of 207-C proceedings.

6. Mr. Pavone agrees that if he is granted an accidental disability retirement under §363 of the Retirement and Social Security Law that he will accept such retirement and retire within 30 days of such decision being rendered by the Retirement System.

7. Mr. Pavone agrees that once he has exhausted any and all administrative remedies prior to, but not including, an Article 78 proceeding, he shall be bound by the determination of the Comptroller on behalf of the New York State Retirement System with respect to this disability. Specifically, Mr. Pavone acknowledges that The Town of Cortlandt in its sole discretion may rely upon the final administrative determination of the Disability Retirement process as being binding upon Mr. Pavone with respect to his eligibility for 207-C benefits. It is expressly acknowledged by Mr. Pavone that if he fails to receive a disability retirement having exhausted his administrative remedies prior to an Article 78 proceeding, that The Town of Cortlandt may unilaterally discontinue his 207-C salary benefits without the need of an administrative hearing. The Town will not be under an obligation to pay Mr. Pavone his salary during the pendency of an Article 78 proceeding. However, the Town agrees to be retroactively bound by the determination of the Article 78 proceeding including by not limited to 207-C benefits and pay.

8. Mr. Pavone agrees to timely assist the New York State and Local Police & Fire Retirement System with the processing of his applications. He agrees to timely respond to all of their requests and cooperate in providing of medical information. He also agrees to submit to those medical examinations deemed necessary by the Retirement System.

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9. In the event that Mr. Pavone is granted a Performance of Duty Retirement, he agrees that his Worker's Compensation equivalent benefits will not exceed \$300.00 weekly.
10. Mr. Pavone agrees to keep The Town of Cortlandt, or its representatives, reasonably up to date as to the status of his pending retirement applications.
11. This agreement may not be modified, altered or changed except upon written consent of all parties wherein specific reference is made to this agreement.

Dated: White Plains, New York

November 8, 1999

THE TOWN OF CORTLANDT

By: *Frederick D. Dugliani*

*Robert L. Pavone*

CHIEF ROBERT L. PAVONE

MAY 12, 1992

25

RESOLUTION

NUMBER 156-92

(RE: EMPLOYMENT & BENEFIT POLICY REGARDING NON-UNION EMPLOYEES)

WHEREAS, the Town Board has long been desirous of adopting a Resolution to formalize an employment policy with respect to non-union employees of the Town; and

WHEREAS, it is the desire of the Town Board to grant to the non-union employees of the Town who work on a permanent basis, the same benefits as those given to the union employees; and

WHEREAS, the Town Boards of the past have established certain additional benefits for non-union or management employees that have never been formalized in the form of a Resolution;

BOW, THEREFORE, BE IT RESOLVED, that the Town Board does hereby grant to all permanent, non-union employees (management employees) of the Town, the same financial benefits as those derived from the Collective Bargaining Agreement including, but not limited to: Health and Dental Insurance, Sick Time, Vacation Time, but not including salary or other steps or other monetary payments; and

BE IT FURTHER RESOLVED, that the Town Board shall continue the practice of carrying Life Insurance for these employees at a value of an amount equal to two (2) times their annual salary; and

BE IT FURTHER RESOLVED, that the Town will continue to maintain long term disability insurance for all permanent, non-union employees; and

BE IT FURTHER RESOLVED, that these employees shall be entitled to all of the benefits of the Collective Bargaining Agreement; and

BE IT FURTHER RESOLVED, that all Department Heads shall be allowed to accumulate up to a total of THREE YEARS OF VACATION TIME, and any Department Head who has accumulated more than two years Vacation Time will be allowed to liquidate up to two (2) weeks of their accumulated Vacation Time over that amount on an annual basis, said payment to be made by the Town Comptroller in any month upon written request of the Department Head.

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF CORNELAND  
MARLETT L. BOYLE  
Town Clerk

Adopted on May 12, 1992  
At a Regular Meeting  
Held at the Community Center